INDEX.

A.

Abbott Brothers, Reports of Practice Cases in New York, 659.

Absent defendant. (See WRIT.) Accord and Satisfaction, 50, 138, 384. Action, 151, 169, 223, 517, 585, 699;

local, 49; surviving of, 531.

Addison, C. G., on Contracts, by In-

gersoll, 658.

Admiralty, 100, 138, 198; jurisdiction, 376; pleading and practice, 47; assessors' award in matter of fact will not be set aside unless proved affirmatively to be wrong. Taber v. Jenny, 47.

Adultery, 639.

Alderson, Sir E. H., notice of, 453. Alien, 227; naturalization of in U.S.

Americans in Turkey, opinion of the Attorney-General of the U. S. 83.

Andrew, C. C., opinions of the Attorney General, vol. vii. 359; Minnesota and Dacotah, 598.

Appeal, 275, 684; probate, 51, 311, 588, 640; from justice of the peace,

Apprentice. (See Master and Ser-VANT.)

Assessor. (See Admiralty.)

Assignment, 170, 216, 217, 283, 411, 414, 444, 458, 532. Assumpsit, 166, 212, 227, 396, 408,

577, 706; money paid, &c. under mistake, 21, 139, 227.

Attachment, 706; of chattels mortgaged, 397; of real estate, 439; what property exempted, 398, 409, 440, 529, 700.

Attorney and Solicitor, duties, powers and liabilities, 158, 220, 353, 430, 519, 521, 569.

Auditor, 286, 693.

Autre fois acquit, and autre fois con-

vict, 209, 470.

Award, 513, 708; presumptions in favor of, 283; partiality and mistake no ground for setting aside, 458; good in part and bad in part, 460; where one of the arbitrators has prejudged the case, the award must be set aside. Taber v. Jenny, 27.

B.

Bail, 343, 533.

Bailment, application of securities, 51; bailee of goods may sue for damage to the goods, 212; diligence required of bailee, 455; voluntary deposit for benefit of third person revocable, 286; innkeepers, 292, 386.

Bankruptcy and Insolvency, debts and proof, 43, 50, 101, 152, 221, 228, 406; assignees' powers, rights and duties, 340, 409, 470, 582; assignees' title and interest, 340, 533; certificate of discharge and its effects, &c., 396, 406. Bastard, 705.

Bennett & Heard, Leading Criminal Cases, 296.

Biddle & McMurtrie, Index to Eng. Com. Law R. 538.

Bills of Exchange and Promissory Notes, 42, 50, 165, 228, 407, 671, 680, 682, 702; when a note is payment, 213, 607, 626; void for want of definite payee, 218; consideration of, 397, 671; notice to indorser, 461, 702.

Burglary, 573.
Bill of Lading. (See Ships and SHIPPING.)

INDEX.

A.

Abbott Brothers, Reports of Practice Cases in New York, 659.

Absent defendant. (See WRIT.) Accord and Satisfaction, 50, 138, 384. Action, 151, 169, 223, 517, 585, 699;

local, 49; surviving of, 531.

Addison, C. G., on Contracts, by In-

gersoll, 658.

Admiralty, 100, 138, 198; jurisdiction, 376; pleading and practice, 47; assessors' award in matter of fact will not be set aside unless proved affirmatively to be wrong. Taber v. Jenny, 47.

Adultery, 639.

Alderson, Sir E. H., notice of, 453. Alien, 227; naturalization of in U.S.

Americans in Turkey, opinion of the Attorney-General of the U. S. 83.

Andrew, C. C., opinions of the Attorney General, vol. vii. 359; Minnesota and Dacotah, 598.

Appeal, 275, 684; probate, 51, 311, 588, 640; from justice of the peace,

Apprentice. (See Master and Ser-VANT.)

Assessor. (See Admiralty.)

Assignment, 170, 216, 217, 283, 411, 414, 444, 458, 532. Assumpsit, 166, 212, 227, 396, 408,

577, 706; money paid, &c. under mistake, 21, 139, 227.

Attachment, 706; of chattels mortgaged, 397; of real estate, 439; what property exempted, 398, 409, 440, 529, 700.

Attorney and Solicitor, duties, powers and liabilities, 158, 220, 353, 430, 519, 521, 569.

Auditor, 286, 693.

Autre fois acquit, and autre fois con-

vict, 209, 470.

Award, 513, 708; presumptions in favor of, 283; partiality and mistake no ground for setting aside, 458; good in part and bad in part, 460; where one of the arbitrators has prejudged the case, the award must be set aside. Taber v. Jenny, 27.

B.

Bail, 343, 533.

Bailment, application of securities, 51; bailee of goods may sue for damage to the goods, 212; diligence required of bailee, 455; voluntary deposit for benefit of third person revocable, 286; innkeepers, 292, 386.

Bankruptcy and Insolvency, debts and proof, 43, 50, 101, 152, 221, 228, 406; assignees' powers, rights and duties, 340, 409, 470, 582; assignees' title and interest, 340, 533; certificate of discharge and its effects, &c., 396, 406. Bastard, 705.

Bennett & Heard, Leading Criminal Cases, 296.

Biddle & McMurtrie, Index to Eng. Com. Law R. 538.

Bills of Exchange and Promissory Notes, 42, 50, 165, 228, 407, 671, 680, 682, 702; when a note is payment, 213, 607, 626; void for want of definite payee, 218; consideration of, 397, 671; notice to indorser, 461, 702.

Burglary, 573.
Bill of Lading. (See Ships and SHIPPING.)

- Bishop, Joel Prentiss, Commentaries on the Criminal Law, 175; on Marriage and Divorce, 238.
- Bond, 102, 517, 584. Bradford, A.H., Reports, vol. iii. 284. Broom, Herbert, Commentaries on the Common Law, 359.
- Brown, David Paul, Memoirs, 435.
- Burglary, 209, 274.
- Burrill, A. M., treatise on circumstantial evidence, 476.
- Byles, John Barnard, on Bills of Exchange, by Sharswood, 58.

C.

- Cabell, J. C. Early History of Virginia, 358.
- Carrier. (See BAILMENT, RAILROAD,) 150, 212, 625; when liability ends,
- Certiorari, 215, 294.
- Champerty and Maintenance, 103, 464.
- Chattel. (See PROPERTY, MORTGAGE, SALE,) 217, 393.
- City Council, powers and proceedings, 382, 395.
- Cleveland, John, banking system of New York, 659.
- Cleverly v. Brackett, overruled, 47. Cockburn, Sir Alexander, 536.
- Cockburn, Henry, Lord, Memoirs, 231, 653.
- Collision. (See SHIPS AND SHIP-PING.)
- Condition, 53, 223, 463.
- Conflict of Laws, 43, 51, 220, 284, 456; lex loci, 531, 534, 568, 626, 682; domieil, 353, 354, 386, 466, 516, 519, 583.
- Conspiracy, 573.
- Constitutional Law, 285.
- Contempt of Court, 153, 516.Contract, implied, 89, 137, 189, 293, 507; illegal, 102, 150, 282, 703; delivery, 166; assignment, 411; reseission, 688; construction of particular contracts, 48, 50, 54, 164, 223, 338, 345, 377, 380, 385, 411, 414, 446, 463, 518, 527, 575, 629, 630, 685.
- Copyright, 352
- Corporation, 844; private, powers, duties, &c. of stockholders, 34, 342, 350, 571, 683; of officers, 266, 343, 585, 630; municipal, 382, 395, 528,
- 583, 703. Costs, 159, 382, 400, 691, 705.

- County Courts of England, 361.
- Courts, judges, and their tenure of office, 61, 132, 594; jurisdiction, &c. 285; Circuit Courts of U. S. 90; Court of Claims, 21, 89; Court of Appeals of N. Y. 594; Probate, 523.
- Covenant, 49, 212, 224, 357, 441, 692, 697, 700.
- Criminal Justice, administration of, 263.
- Curtis, B. R. Reports, 112, 658.
- Cushing, Caleb, Attorney-General of the United States, opinions by, 83, 181, 421, 661.
- Cushing, Luther S. 179; Parliamentary Law, 295.

D.

- Damages, 406, 535, 586, 692, 693, 697, 702; for tortious taking of whale. Taber v. Jenny, 27. If substantial doubt exist as to any of the elements of damage, they are to be solved against the wrong doer. Taber v. Jenny, 27; liquidated, 224; recoupment, 198; for services performed under a contract within statute of frauds, and not in writing, 447; assessment of, 636; era
- sure, 697.

 Davis, Woodbury, Judge of Supreme Court of Maine, removal of, 61; restoration of, 652.
- Debt, 451.
- Deed, delivery of, 47, 635; words to pass soil, 49; to centre of road, 150; reservations in, 350, 401; covenants, 441; construction, boundaries, description, &c., 48, 159, 388, 410, 468, 575, 624, 628, 641, 692.
- Devereux, John C., Reports and digest of opinions in Court of Claims, 539.
- Devise. (See WILL.)
 Digest, United States Annual Digest,
 475; Index to Eng. Com. Law Rep. ty Rep., 711.
- Distance, how computed, 164.
 Divorce. (See MARRIAGE AND DI-VORCE.)
- (See Conflict of Laws.) Domicil. Dower, 270, 683; assignee of widow's right may sue in her name, 291; in trust estates, 515, 532.

E.

Easement, 350, 530. Elections, 1, 576.

Embezzlement, Rev. St. of Mass. c. 133, § 10; will not authorize proof of several acts, under a general charge alleging one embezzlement, Com'th v. Tuckerman, 503.

Eminent Domain, a prize essay on, 241, 301; private property taken for public uses, 106, 344, 693, 702. English Common Law Reports, vol. 1xxxv. 599, vol. 1xxxvi. 711; index

to series, 538.

Equity, jurisdiction, 52, 53, 406, 585, 700, 707, 708; pleading and evidence, 52, 285, 346, 388, 400, 514, 702; specific performance, 517; injunction, 222, 352, 354, 523.

Error, 396.

Estoppel, 514, 694.

Evidence, 152, 217, 218, 223, 275, 277, 282, 284, 567, 572, 581, 588, 635, 704; presumptive, 635; burden of proof in capital cases, 611; in other cases, 532, 624; book charges, 152, 285; depositions, 282, 288, 347, 695; statement and admissions of party privy or agent, 284, 351, 394, 462, 635, 696, 701; witnesses, their examination, impeachment and support, 217, 218, 277, 290, 345, 443, 581, 588, 611, 635, 641, 681, 704; secondary, 395, 524; explanation, variation, &c., of writings, 45, 164, 285, 350, 459, 460, 523; testimony of parties, 286, 409, 629, 635, 681.

Exceptions, 294, 628, 635, 705.

Executors and Administrators, ap-

Executors and Administrators, appointment, 292, 329, 466; rights, powers and duties, 107, 286, 329, 414, 455, 530, 624; suits by and

against, 457, 469.

Execution, arrest on, 536; levy and sale, 281, 346, 385, 398, 402, 439, 699.

F.

False imprisonment, 701.
False pretences, 167, 224, 225.
Fay, S. P. P., notice of, 119.
Fixtures, 106, 162, 357.
Forgery, 224.
France, legal education in, 601; a criminal trial in, 647.

Fraud, fraudulent and voluntary conveyance, 151, 152, 167, 220, 340, 402, 414, 444, 458.

Frauds, Statute of, signing, 100; contract not to be performed within a year, 166, 395, 467; interest in lands, 213, 390, 446, 632; sale of goods and stocks, 228, 381, 448; entire contract partly within statute, 229, 439; debt of another, 447, 457, 465, 627, 631; part performance, 228, 469.

G

Gaming, 166, 280, 573.

Gift, (See Fraud), causâ mortis, 400, 578, 587, 636.

Graham and Waterman, on new trials, 172.

Grant. (See Deed.)

Gray, Horace, Reports, 115, 656.

Greenleaf, Simon, Overruled Cases, 116; Evidence, vol. iii., 238.

Guardian and ward, 569, 580, 681.

H.

Hoar, Samuel, obituary notice of,

Hoffman, Ogden, obituary notice of, 117.

Homicide, 90.

Howard, B. C., Reports, vol. 18, 473. Huntington's trial, 589.

Hurd, J. C., topics of jurisprudence connected with conditions of freedom and bondage, 417.

Husband and wife, 161, 168, 353, 386, 465, 466, 581, 636, 708; wife of alien enemy cannot sue in her own name, 227; settlement, 162, 516; action by husband for wife's services, 284; action against husband for wife's support, 412, 577; allowance to widow, 341, 689.

I.

Indictment and complaint, 166, 167, 209, 280, 290, 291, 410, 412, 413, 443, 503, 567, 573, 582, 584, 585, 587, 632, 637, 638, 639.

Insanity, evidence and effect of, 407, 588, 589, 611.

- Insolvents in Massachusetts, Lists of, 59, 120, 180, 239, 300, 360, 420, 480, 540, 600, 660, 713.
- Insolvent Debtors. (See BANKRUPTCY AND INSOLVENCY.)
- Insurance, Marine, 356; implied warranty of seaworthiness, 99, 100; gambling policy, 227; deviation, 163; profit on goods, 163, 227; total loss of goods in packages, 219; constructive, 646.
 - Fire, By-laws of Insurance Co's, 281, 286,403, 404, 413, 585; double insurance, 45, 281, 403; prohibited articles, 151; warranty, description, increase of risk, representation, 356, 403, 703; returns of foreign insurance companies, 45.
- Interest, 626.
- International Law, 137, 138, 329, 421.
- Intexicating liquors, 280, 284, 290, 398, 412, 470, 530, 585, 587, 632.

J.

- Judgment, (See Conflict of Laws,) 385, 403, 530, 583, 580, 582, 630; of inferior court in matters within its discretion, 285, 348.
- Jurisdiction. (See Courts.) Jury, 462,708; affidavit of what passed in jury room inadmissible, 343; organization of, 348; what questions are for, 348; misconduct of, 461. Justice of the Peace, 150, 288, 400.

L.

- Landlord and Tenant. (See Fix-TURES.) Estates at will and notice to quit, 44, 588; eviction, use and occupation, 44; covenants and conditions, 162, 166, 354, 410, 631, 697; tenant holding over, 345; emblements and crops, 467.
- Larceny, 209, 224, 448.
- Law Journal, quarterly, 117. Law Register, 179.
- Legislation in Massachusetts, 132; in New Hampshire, 326.
- Limitations, statute of, 152, 214, 440, 583; new promise, 151, 355; absence from State, 440, 525; partial

- payment, 159; for crimes, 280; in case of dower, 291, 683; action on judgment, 441; presumption of pay-
- ment after 20 years, 292. Lien, 391, 490, 701; churchwardens have no lien, 164; of mechanics, 152, 440; of material men, 152; judgment, 151.

Lottery, 288.

M.

- Maine Reports, vol. 38, 235.
- Maintenance. (See Champerty.) Mandamus, 215. Manslaughter. (See Homicide.)
- Marriage and Divorce, 270, 353, 409, 571, 582, 639; nullity, 466. Massachusetts, Laws of, 132, 359.
- Massachusetts legislation for 1856,
- acts and resolves, 359. Master and servant, liability of master for default of servant, 104, 469, 551; apprentices, indentures of, &c., 391; action for enticing servant,
- 392. Mayor of Boston, his powers under
- the riot act, 616. Mechanics Lien. (See LIEN.)
- Misnomer, 628. Mortgage, 47, 51, 53, 106, 338, 530,
- 699; foreclosure, redemption, 46, 224, 340, 691, 702; second mortgagee may foreclose while first in possession, 46; assignment of, to owner of equity does not create merger, where a second mortgage outstanding, 338; of chattels, 397, 459; once discharged cannot be revived, 399; by railroad companies, 278,280; under authority of legislature may pass after acquired property, 278, 280; of chattels, and accretion, 278, 280, 288, 688; evidence admissible to show what debt secured by, 289; contribution for by different par-
- ties, 390.

 Mohl, Robert von, on Political Science in America, 369.

N.

- Naturalization. (See ALIEN.) New Trial, 286, 461, 628; may be granted for admission of immaterial evidence, 286.

Noyes, William Curtis, address before the graduating class of the law department of Hamilton College, 476. Nuisance, action by reversioner, 159.

0

O'Brien, William Smith, Principles of Government, 597.

Officer, 20, 138, 139, 400, 408, 512; return of, 51, 536, 633, 641; public, extra allowance to, under laws of U. S., 88, 89, 138; presumption of due appointment of, 621; may be punished summarily, as for a contempt, if he use the process of the court for oppression, Gilbert v. Sanborn, 153; rights, duties, and liabilities in cases of attachment and sale on execution, 153, 281, 346, 411, 291, 455, 525, 579, 628, 643, 707; in criminal cases, 411, 566, 588; bound to bey instructions unless indemnity demanded and refused, 346; liability of sheriff for acts of deputy, 346.

P.

Palmer, William, trial for murder,

Parent and child, 167, 220, 288, 293, 385, 392, 402. Where minor shipped for whaling voyage, under direction of his father, who furnished outfit, suit was rightly brought in father's name, Gifford v. Kallock, 21; a father shipped his minor son for a whaling voyage, and the son faithfully performed his duty during his minority, and afterwards deserted before the termination of the voyage; held, that the desertion did not forfeit the wages earned during the minority, Coffin v. Shaw, 146.

Parliamentary Law, (See City Council,) 61, 196; Cushing on, 295.

Parsons, Theophilus, Mercantile Law, 358.

Parties to actions, 42, 281, 386. Partnership, what constitutes, 564; interest in real estate, 106, 406; powers of partners, 287, 449, 630; dissolution and its effects, 287, 449, 570; separate estate, 291.

Patent, 161, 355. Pauper, 412, 464, 634, 706; settle-

ment of, 344, 391, 525.

Penalty, under statute for taking illegal fees, 400.

Pensions, cannot be assigned, 451.

Perjury, 407, 638; to constitute false swearing under act of Congress of 1813, concerning payment of fishing bounty, there must be a wilful and corrupt intent to swear falsely, United States v. Smith, 91; so of false swearing concerning the expenditure of public money, under act of 1823, United States v. Atkins, 95.

Pleading, 57, 166, 229, 285, 356, 447, 696, 701; points decided under the Statute of Mass. 1852, c. 312, 41, 408, 409, 414, 441, 442, 587, 700; amendment, 210, 211, 408, 443, 531, 587, 633.

Poor Debtor, 50.

Principal and agent, power of one joint agent, 45; rights of agent against principal, 101, 515; rights of principal against agent, 165; rights of third parties against principal or agent, 42, 229, 446, 448, 460, 564, 628, 681.

Principal and surety, 102, 214, 447, 456, 697, 705; guaranty, 47, 355, 642; giving time to principal, 405, 527; alteration of duties or situa-

tion, 517. Prize, 138.

Prize fighting, 584.

Property, dogs may be, 639; where a whale is killed, and is anchored in the open sea and left with marks of appropriation, it is the property of the captors. Taber v. Jenny, 27.

Protest, insufficient, not a bar to action in court of claims for duties overpaid, 21.

Purpresture, 181.

Putnam, J. P., United States Digest, 475.

R.

Railroad. (See Eminent Domain, Carrier.) Station grounds, 169; tariff of fares and suits for fares and tolls, 343, 394; liability for bad fences, 460, 694; mortgages, 278, 280, 289.

Replevin, 393, 408, 641; does not lie to try right of property in England, 357.

Revenue Laws, 621, 623; an information in rem for forfeiture under St. 1799, c. 22, § 66, must allege that the goods were falsely invoiced with the design to evade duties. United States v. Three Parcels of

Embroidery, 140; it seems that such an information should brought in the name of the United States alone, ib. The additional duty of St. 1854, c. 30, § 6, is to be reckoned on the original duty, and not on the value of the goods. U. States v. Pingree, 667; bond under that Statute, 667.

Riot. (See Mayor)

Robinson, Conway, Practice in England and America, 177.

S.

Sale, of chattels, and of requisites of bill of sale, 46, 48, 161, 282, 357, 576; warranty in sale of chattels, 12, 532, 579; who is bond file purchaser, 646.

Scire facias, 342.

Sedgwick, Charles, Obituary notice

Set-off, 214, 277, 394, 535, 700.

Seisin and Disseisin, what possession is adverse, 644, 694.

Shell fish, 588.

Ships and shipping, 377; description of a voyage " to the Pacific Ocean and elsewhere," defective, Gifford v. Kallock, 21; if the usages of a particular port or trade authorizes an interpolation of the port of departure as the port of termination, this must be qualified by the implication, that the return shall be within a reasonable time, ib.; a whaling voyage is a cruise for taking whales, and does not include a trading voyage to dispose of the cargo, ib.; complete forfeiture of wages does not necessarily follow desertion, the court may consider all palliating circumstances, unless all the requisites of the statute have been complied with by the master, ib.; full freight is due on all goods laden, though they may be deteriorated by Steelman v. Taynatural causes. lor, 36; where bill of lading agrees for certain freight "with primage and average accustomed," it may be shown that no primage is allowed by custom, Vose v. Morton, 43; liability of general owner under charter party to master, 43; bill of lading, 43, 198, 376, 458; collision,

100, 220, 379; where tow-boat furnishes the motive power, 544; charter-party, and duties of shipper, master and ship-owner, 160, 163, 164, 169, 357, 335, 518; freight, 43, 198, 646; St. 1842, c. 106, §§ 3, 4, 5, concerning vessels propelled by steam, and carrying passengers, applies to all vessels which actu ally carry passengers, though not usually so employed, United States, v. The Thomas Swan, 201; negro slaves shipped by their owner are passengers, 202; average, general and particular, 219, 356; master and crew, their rights and duties, 490, 518; salvage is earned by a vessel when cable is cut to avoid collision with another vessel which is drifting, although the cutting be necessary for the safety of the salvor vessel, The John Perkins, &c., 490; salvors are bound to use reasonable diligence in the care of the property saved, and negligence will forfeit or diminish the amount of their salvage earned, ib.; if part of the crew remain on board a vessel after she is abandoned by the master and part of the crew under circumstances which justified the abandonment, they may earn salvage, ib.

Slander, what words actionable, 439, 448; privileged communications, 169, 580.

Smith, Chauncey, Digest of Eng. Law and Equity Rep., 711.

Smith, Gerritt, argument in a capital trial, 710.

Slave trade, construction of acts concerning, 449, 623.

Smith, John William, on Landlord and Tenant, 58; contracts, 417.

Smith, E. Delafield, Reports, C. C. P., New York, 599.

Story, Joseph, Treatise on Prize Law by Pratt, 475.

Statute law of England, consolidation of, 481; construction of particular 290, 329, 350, 381, 382, 406, 409, 414, 439, 440, 446, 449, 465, 467, 469, 503, 525, 532, 557, 582, 616, 627, 631, 632, 686, 693.

Sunday, 151, 338, 701.

Tender, 391, 701.

Temperance, Essay for Legislation on, 111.

Tenant in common. One tenant in common cannot maintain use and occupation against lessee of his cotenant, without demand to occupy himself in atonement, 41; may maintain trespass, 338.

Time, how computed, 529.

Town officer, 891, 441.
Town, (See WAY, CORPORATION,) 695.

Trade mark, 222, 352,

Trespass, 211, 393, 636, 688, 694. Trover, 217, 347, 410. Trust and Trustee, 170, 289, 353; sale of office by trustee, 103; power of sale, 108, 634; appointments to uses and creation of trusts, 103, 221, 517; trustee takes in failure of beneficiaries, 226; duties and liabilities of trustee for himself, and for co-trustee, 353, 514, 528; conveyance to public uses, 292; resulting and implied trusts, 465.

Trustee process, 51, 289, 393, 401, 463, 583; 695, 707.

U.

United States Digest, 475. Usage, 36, 43, 462. Usury, 51, 339, 389, 531, 570;

Venue, 167.

Verdict may be returned on Sunday, 338; effect of on the pleadings 447. Viceroys, Spanish, their diplomatic power, 421.

W.

Warren, Samuel, Miscellanies, 418. Warranty, in sale of lands by Marshall, 18; in sale of chattels, (See SALE.)

Washburn, Emory, Address to the bar of Worcester County, 298.

Waste, 388. Way, 215, 281, 289, 293, 294, 400, 468, 574, 585, 627, 687, 690, 691, 702

Wearing apparel, 467.

Webster, Daniel, Private Correspondence, 541.

Wisconsin election case, 1, 111.

Will, devise and bequest. Construc-tion, 107, 108, 110, 152, 160, 167, 168, 221, 225, 226, 244, 352, 354, 398, 512, 513, 514; amount of interest, 220, 222, 294, 381; perpetuities and conditions, 157, 578; heirs and next of kin, 353, 512, 513; whether conditional, 398; execution and attestation, 443, 519; probate, 152, 852, 402; nuncupative, 454.

Williams, Joshua, Law of Real Property, by Rawle, 599.

Writ, service of an absent defendant, 399, 403, 630, 695.

